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CLEARINGHOUSE RULE 98-180

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

The “summary of rules” in the fiscal estimate indicates that the size threshold for department regulation of private sewage systems will correlate with similar rules promulgated by the Department of Commerce. The department will regulate systems at or over the threshold, and the Department of Commerce will regulate systems under the threshold. However, the rules do not contain any indication that the timing of rule promulgation will be coordinated with the promulgation of revisions to ch. Comm 83. If the promulgation of these rules is not coordinated, and this rule is promulgated first, there may be a period of time when systems with a design capacity of more than 8,000 gallons per day but less than 12,000 gallons per day will not be regulated. Promulgation of the rules by the two agencies can be coordinated by a properly drafted effective date provision. The Revisor of Statutes should be consulted regarding the best method for drafting an effective date provision.

Also, an inconsistency in the fiscal estimate should be noted. The “summary of rules” states that systems with a capacity of less than 8,000 gallons per day are exempt from Wisconsin Pollutant Discharge Elimination System (WPDES) permits but the “assumptions” in the fiscal estimate state that systems of 8,000 gallons per day or greater are not subject to a WPDES permit.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The introductory paragraph of s. NR 200.03 (4) provides that “one of the following methods” shall be used to calculate design capacity of a private sewage system. This introductory paragraph is followed by three paragraphs that constitute methods for calculating design capacity. The fourth paragraph, relating to multiple systems, could apply to any of the three methods. For organizational clarity, s. NR 200.03 (4) (d) should be placed in a separate subsection.

b. The introductory paragraph to s. NR 200.03 (4) refers to calculation of “the design capacity in sub. (3) (d).” However, s. NR 200.03 (4) (d) refers to calculation of “the threshold design capacity under this subsection.” This latter provision is merely an application of the design capacity calculation under specific circumstances, and the terminology should be the same as the introductory paragraph.

c. Section NR 200.03 (4) (b) and (c) refer to “methods approved by the department.” Will these methods be promulgated as rules? [See s. 227.01 (13) and 227.10 (1), Stats.] If not promulgated as rules, how will a person be able to ascertain what methods have been approved by the department?

d. Section NR 200.03 (4) (d) is difficult to understand. The phrase “located on the same property or properties” causes problems because the sentence can be read: “If more than one subsurface soil absorption system is located on the same properties” It appears that this sentence could be modified without losing any of its meaning by deleting the phrase “located on the same property or properties.”

e. Another problem with s. NR 200.03 (4) (d) is the definition of “ownership.” That word should be included in quotation marks. The form of the definition should be changed to state that “ownership” means “ownership by a person, group of persons” The phrase “group of persons” is so vague that it is almost meaningless. The word “ownership” may not be adequate to deal with all of the circumstances meant to be addressed by the rule, such as situations in which private sewage systems in a large group are owned as limited common elements in a condominium. The variety of ways that private sewage systems may be designed and owned makes it virtually impossible to describe with precision all of those circumstances, and to maintain a seamless regulation between the department and the Department of Commerce. The department should consider whether this portion of the rule should contain a process that triggers a case-by-case review of the applicability of the rule. For example, if the design capacities of systems within a certain radius exceeded a threshold, the department could be required to review the ownership status of those systems to determine whether a WPDES permit is required.

f. Another element that is missing from this part of the rule is a process for addressing the situation where a project may be developed in stages, and the threshold is not met until substantially well into the project. If this occurs, is a WPDES permit only required when the threshold is met, or would it be more appropriate to require a WPDES permit at an earlier stage in the project?